

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Peña	Team: Team # 1	CCRB Case #: 200402459	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/17/2004 9:30 PM	Location of Incident: lobby of § 87(2)(b)	Precinct: 34	18 Mo. SOL 9/17/2005	EO SOL 9/17/2005	
Date/Time CV Reported Wed, 03/17/2004 10:28 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 03/17/2004 10:28 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Fabio Nunez	01432	925839	034 PCT
2. POM Carl Bennett	29180	929704	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Fabio Nunez	Abuse: PO Fabio Nunez stopped and questioned § 87(2)(b) and § 87(2)(b)	
B.POM Fabio Nunez	Discourtesy: PO Fabio Nunez spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)	
C.POM Fabio Nunez	Abuse: PO Fabio Nunez threatened to arrest § 87(2)(b)	
D.POM Fabio Nunez	Force: PO Fabio Nunez used physical force against § 87(2)(b)	
E.POM Fabio Nunez	Force: PO Fabio Nunez used physical force against § 87(2)(b)	
F.POM Carl Bennett	Abuse: PO Carl Bennett frisked § 87(2)(b)	
G.POM Carl Bennett	Force: PO Carl Bennett used physical force against § 87(2)(b)	
H.POM Carl Bennett	Abuse: PO Carl Bennett searched § 87(2)(b)	
I.POM Fabio Nunez	Off. Language: PO Fabio Nunez made remarks to § 87(2)(b) and § 87(2)(b) based upon their sexual orientation.	
§ 87(2)(g), § 87(4-b)		

## Synopsis

On March 17, 2004, § 87(2)(b) contacted the CCRB via phone to file a complaint against PO Fabio Nunez and PO Carl Bennett. § 87(2)(b) stated that earlier that day, he was walking through the corridor of the lobby when he saw his neighbor § 87(2)(b) being stopped by PO Nunez and PO Bennett. He heard § 87(2)(b) explain to PO Nunez why he only had a New Jersey license. PO Nunez responded that he did not want to hear his “fucking stories” since it was “bullshit” and he would “take him in and still get paid for it.” As § 87(2)(b) approached, he was grabbed by PO Nunez and pinned against the wall. PO Bennett conducted the frisk and search of § 87(2)(b). § 87(2)(b)’s identification was retrieved as a result of the search. § 87(2)(b) alleged that PO Bennett used “Karate chops” in his groin area. Before leaving the lobby, PO Nunez stated “you faggots think you know the law very well, this lobby belongs to us.”

Apartment building § 87(2)(b) is enrolled in the “No Trespass” Affidavit Act program. § 87(2)(g), § 87(2)(b)

[illegible]

### **Summary of Complaint**

§ 87(2)(b) was interviewed by the CCRB on March 25, 2004 (encl. 4a-c). § 87(2)(b) is a § 87(2)(b) Hispanic male who § 87(2)(b). He resides at § 87(2)(b) in § 87(2)(b) on the § 87(2)(b) floor. This building is part of the “No Trespassing” Affidavit program and monitored by the 34<sup>th</sup> precinct (encl. 11).

§ 87(2)(b), § 87(2)(g)

On March 17, 2004, at approximately 9:30pm, § 87(2)(b) was on his way to the grocery store, when he saw a friend and neighbor, § 87(2)(b) being stopped by PO Fabio Nunez and PO Carl Bennett in the lobby. § 87(2)(b) had his hands up and his back against the wall and was being searched. § 87(2)(b) heard PO Nunez curse at § 87(2)(b) for having a New Jersey State identification card. When § 87(2)(b) explained that he did live in the building with a roommate but did not have the key, PO Nunez told him that he “didn’t want to hear his fucking stupid stories, that’s bullshit.” § 87(2)(b) told PO Nunez that he just got home from

work, to which PO Nunez responded he “doesn’t give a fuck, I’ll take you in and still get paid for it.”

Since it is a long hallway and § 87(2)(b) was walking slowly, he was able to hear the entire conversation between PO Nunez and § 87(2)(b). As § 87(2)(b) approached PO Nunez, PO Nunez motioned him to stop. PO Bennett remained with § 87(2)(b) and PO Nunez asked § 87(2)(b) for identification and if he lived in the building. When § 87(2)(b) reached for his identification in his jacket pocket, PO Nunez grabbed him and threw him against the wall with one hand. § 87(2)(b) asked PO Nunez “what the fuck?” and PO Nunez told him that it “was not fucking necessary.” PO Nunez told § 87(2)(b) that he would “fucking” get it [identification]. § 87(2)(b) questioned why he was thrown against the wall as PO Bennett frisked him. § 87(2)(b) stated that the frisk consisted of “Karate chops” to his groin area. § 87(2)(b) remained by § 87(2)(b) and told him to relax. PO Bennett held the identification, and showed it to PO Nunez. § 87(2)(b) could not provide any explanation as to how the identification was obtained. PO Nunez asked § 87(2)(b) where he lived to which § 87(2)(b) replied “look for yourself” motioning towards the identification. PO Nunez then said, “you faggots think you know the law very well, this lobby belongs to us.” § 87(2)(b) told him he would file a complaint against PO Nunez, to which PO Nunez responded for him to leave the lobby. As he went upstairs, § 87(2)(b) looked at PO Nunez’ badge. PO Nunez told § 87(2)(b) to “look really good at it.”

### Results of Investigation

§ 87(2)(b) was interviewed on April 16, 2004 at § 87(2)(b) in § 87(2)(b) (encl. 5a-c). § 87(2)(b) and § 87(2)(b) live in the same building together, and have grown up together.

On March 17, 2004 at approximately 9:30pm, § 87(2)(b) was attempting to enter his building. § 87(2)(b) did not have the keys to the building, and when a tenant exited the building, he entered. As § 87(2)(b) waited in the lobby for § 87(2)(b) to come down stairs, PO Nunez and PO Bennett came down the stairs and approached him. PO Nunez asked § 87(2)(b) whether he lives in the building, and § 87(2)(b) told him that he did, but only had a New Jersey State driver’s license.

As soon as § 87(2)(b) came down the stairs, he was grabbed by PO Nunez and thrown against the wall. § 87(2)(b) told PO Nunez that § 87(2)(b) was his cousin, and is a regular visitor of the building. PO Nunez asked § 87(2)(b) for identification and if he lived in the building, and § 87(2)(b) presented it to him. After reviewing the identification, he asked § 87(2)(b) again if he lived in the building. § 87(2)(b) responded that he had the identification and motioned for PO Nunez to look at it. PO Nunez grabbed § 87(2)(b) and threw him against the wall of the lobby by the back of his head. PO Nunez then also grabbed § 87(2)(b) and threw him against the wall face first. § 87(2)(b) explained that he lived in the building but did not have a key. PO Nunez continued to push § 87(2)(b) against the wall and search his pockets. He stated that § 87(2)(b) never responded to PO Nunez. He also stated that PO Bennett never participated in the search. PO Nunez untucked § 87(2)(b)’s shirt from his pants and searched § 87(2)(b)’s pockets. § 87(2)(b) told PO Nunez that he was going to get his badge number, and PO Nunez said that was okay.

§ 87(2)(b) stated that the incident lasted a couple of minutes and there was no profanity used by either the officers or the civilians. PO Nunez told § 87(2)(b) if § 87(2)(b) was his friend, he should get in his “damn house.” § 87(2)(b) tried to explain that they were

on their way out, but both went up to § 87(2)(b)'s apartment. The officers then left the lobby. § 87(2)(b) stated that PO Nunez never made any comments based on their sexuality nor did he ever use offensive terms or profane language. When PO Nunez frisked § 87(2)(b) he searched from his waist up. He never saw the officer make any contact with § 87(2)(b)'s groin area as described.

#### PO Fabio Nunez

*PO Fabio Nunez was interviewed by the CCRB on April 28, 2004(encl. 6a-e). On March 17, 2004 he worked a 4x12, and was assigned to patrol in RMP § 87(2)(b) in sector David. PO Nunez was assigned to work with PO Bennett in uniform. PO Nunez did not have any memo book entries in regard to this incident.*

On March 17, 2004, PO Nunez and PO Bennett received a call of a drug sale and disorderly conduct in front of § 87(2)(b) and § 87(2)(b). PO Nunez stated that this area is a drug-prone location. Both officers went into § 87(2)(b) and conducted a vertical in the building. Since the roof connects the buildings to each other, the officers came down § 87(2)(b). PO Nunez observed two gentlemen standing by the front door. PO Nunez could not see the gentlemen coming into the building, since he was coming down the stairs. As the officers approached, they asked if § 87(2)(b) and § 87(2)(b) lived in the building. § 87(2)(b) stated that he did not live in the building, while § 87(2)(b) remained quiet with his hands in his pockets. PO Nunez asked for him to take his hands out of his pocket, and again asked § 87(2)(b) for identification. PO Nunez removed § 87(2)(b)'s hands from his pocket and placed § 87(2)(b) against the wall with minimum physical contact. PO Nunez stated that it is a narrow hallway and since he was the lead officer, he grabbed § 87(2)(b). PO Nunez patted § 87(2)(b) down for weapons, for his own safety but never searched § 87(2)(b)'s pockets. PO Nunez asked § 87(2)(b) for identification again and at that point § 87(2)(b) provided it. PO Nunez wrote down his information and explained to him why he was stopped. § 87(2)(b) seemed very upset, unlike § 87(2)(b) who was very cooperative and even showed the officers his identification. § 87(2)(b)'s hands were the only part of his body that made contact with the wall. The pat down included frisking his pockets and upper body. At no point did PO Nunez make contact with § 87(2)(b)'s groin area.

PO Nunez felt that § 87(2)(b) posed a threat by refusing to take his hands out of his pockets and failing to comply with a request for his identification. After he presented identification verifying that he did reside in the building, a Stop, Question, and Frisk Report was prepared and the officers left the building (encl. 10). PO Nunez stated that § 87(2)(b) left the building while § 87(2)(b) went upstairs.

PO Nunez did not recall ever seeing § 87(2)(b) before or after this complaint. PO Nunez stated that no stop and question report was prepared for § 87(2)(b) since he was never frisked; though he was asked whether he was a resident of the building and remained in the hallway during the encounter.

#### PO Carl Bennett

*PO Bennett was interviewed on June 8, 2004(encl. 7a-d). § 87(2)(g)*

After receiving a radio transmission of a drug sale in § 87(2)(b) PO Bennett's attention was diverted toward § 87(2)(b). PO Bennett could see inside to the vestibule area where § 87(2)(b) and § 87(2)(b) were standing. The officers went through the roof and

over to § 87(2)(b), and stopped both individuals in the lobby. The officers told § 87(2)(b) and § 87(2)(b) to go outside or to their apartment. § 87(2)(b) left the building, but § 87(2)(b) remained inside and told the officers that since he lived in the building he did not have to leave.

PO Bennett conducted the frisk of § 87(2)(b) which consisted of touching his waistband. The frisk was conducted for the officers' safety since § 87(2)(b) was non-compliant with the request for identification, which was made based on the fact that the building is registered as a "no-trespass" building. PO Bennett stated that he did have to use a very minimum amount of force to put § 87(2)(b) against the wall so that he could perform the frisk. § 87(2)(b) presented his identification to PO Bennett, with which PO Nunez prepared a Stop, Question, and Frisk Report. § 87(2)(b) did seem upset that he was being stopped and asked PO Nunez for his name and shield number, which was provided. The officers waited for § 87(2)(b) to leave before exiting the building.

#### Police Documents

Though both officers testified that they filled out a **Stop, Question, and Frisk Report** for § 87(2)(b) PO Nunez signed the report (encl.10). The report indicates that § 87(2)(b) was stopped on a suspicion of CPW, but the circumstances leading to the stop are listed as 'actions indicative of acting as a lookout.' The report indicates that force, described as 'hands on suspect' is listed as having been used during the stop. The report also indicates that § 87(2)(b) was frisked but not searched.

No record of a Stop, Question and Frisk Report was found for § 87(2)(b). There are no entries made in the **Stop, Question, and Frisk Log** for March 17, 2004, for either § 87(2)(b) or § 87(2)(b) (encl. 9a-c).

#### Photo

The investigator took a photo on April 16, 2004, of the outside of § 87(2)(b). The photo illustrates that there is a "No Trespass" sign outside of the entrance (encl. 11).

#### Officer History

PO Nunez has a total of 3 CCRB complaints, including this one, consisting of 8 allegations after being with the NYPD for four years. All of his complaints are currently under investigation (encl. 1).

PO Bennett has a total of 2 CCRB complaints, including this complaint, consisting of 3 allegations after being with the NYPD for two years. His prior complaint is currently under investigation (encl. 2).

#### Civilian Complaint and Criminal History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b) also has no prior CCRB complaints on file.

### Conclusions and Recommendations

#### Undisputed Facts

It is undisputed that PO Nunez stopped § 87(2)(b) and § 87(2)(b) in the lobby of § 87(2)(b). It is also undisputed that identification was presented to the officers by § 87(2)(b) and a Stop, Question, and Frisk report was prepared.

## Disputed Facts

§ 87(2)(g), § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

## Credibility Analysis

§ 87(2)(b)

§ 87(2)(b), § 87(2)(g) In his initial brief telephone statement to the CCRB investigator, he alleged that PO Nunez forcibly threw him against the wall. Additionally, he stated that PO Bennett forcibly frisked him in his groin area. However, during his CCRB interview, § 87(2)(b) added allegations of discourtesy and offensive language by PO Nunez. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

## PO Fabio Nunez and PO Carl Bennett

§ 87(2)(g) Both officers testified that when § 87(2)(b) was frisked, he was first placed against the wall with a minimal amount of force. They also both took responsibility for performing the frisk of § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

## Allegation A: Abuse of Authority: PO Fabio Nunez stopped and questioned § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) stated that as he was exiting his building, he saw § 87(2)(b) being stopped by PO Nunez. Additionally, he stated that he heard PO Nunez ask § 87(2)(b) for his identification. § 87(2)(b) alleged that when he approached, PO Nunez also stopped and questioned him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

The Trespass Affidavit Act authorizes officers to enter the premises of registered buildings and stop anyone who enters the building without a legitimate purpose (encl. a-h). Registered buildings have signs posted outside informing members of the public that they will be arrested if they cannot provide any legitimate reason for being on the premises. The Act states that “if there is some factor in addition to the existence of the affidavit, the police may conduct either a level-one or level-two inquiry depending upon the information known to them.”

PO Nunez and PO Bennett testified that after responding to a drug sale at § 87(2)(b), they went over to § 87(2)(b) where they saw § 87(2)(b) and § 87(2)(b) engaged in

conversation in the lobby. As the lead officer, PO Nunez stopped both § 87(2)(b) and § 87(2)(b) and asked if they were tenants of the building. PO Nunez stated that § 87(2)(b) immediately admitted that he was not, while § 87(2)(b) did not respond and stood with his hands inside his pockets. § 87(2)(b), § 87(2)(g)

PO Nunez provided documentation that a Stop, Question, and Frisk report was filled out for § 87(2)(b) (encl. 10). However, he stated that since § 87(2)(b) was not frisked, no report was prepared for § 87(2)(b) § 87(2)(b), § 87(2)(g)

**Allegation B: Discourtesy: PO Fabio Nunez spoke obscenely to § 87(2)(b) and § 87(2)(b)**

§ 87(2)(b) alleged that PO Nunez was verbally abusive throughout the stop. He alleged that PO Nunez told § 87(2)(b) that he did not want to hear his “fucking stories.” § 87(2)(b), § 87(2)(g)

**Allegation C: Abuse of Authority: PO Fabio Nunez threatened to arrest § 87(2)(b)**

§ 87(2)(b) alleged that PO Nunez threatened § 87(2)(b) with arrest by telling him that he would “take you in and still get paid for it.” § 87(2)(b), § 87(2)(g)

**Allegation D: Force: PO Fabio Nunez used physical force against § 87(2)(b)**

§ 87(2)(b), § 87(2)(g) PO Nunez did confirm that he pinned § 87(2)(b) against the wall. PO Nunez expressed that he felt threatened by § 87(2)(b) since he had his hands in his pockets. At the time that the force was used, § 87(2)(b) had yet to present his identification. § 87(2)(b) also stated that he had to tell § 87(2)(b) to calm down while he was against the wall. § 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 203-11(encl. k-l) indicates that officers are allowed to use the minimal force that is necessary. § 87(2)(b), § 87(2)(g)

**Allegation E: Force: PO Fabio Nunez used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that after PO Nunez pinned § 87(2)(b) against the wall, he also pinned him against the wall. § 87(2)(b) was the only party who made this allegation. § 87(2)(b) never said that any force was used against § 87(2)(b) PO Nunez even admitted to forcibly pinning § 87(2)(b) against the wall. PO Nunez stated that § 87(2)(b) was very compliant and therefore his attention was drawn towards § 87(2)(b)

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation F: Abuse of Authority: PO Carl Bennett frisked § 87(2)(b)**

While both officers volunteered that they frisked § 87(2)(b), § 87(2)(b) stated that he recalled being frisked by PO Bennett. § 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]

Patrol Guide Procedure 212-11 (encl. I-j) indicates that a frisk may be performed if there is a concern for an officer's safety. PO Nunez stated that he felt threatened by § 87(2)(b)'s behavior since he kept his hands in his pockets when he was initially stopped. § 87(2)(b) at first refused to take his hands out of his pockets and did not initially provide identification. § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation G: Force: PO Carl Bennett used physical force against § 87(2)(b)**

Patrol Guide Procedure 212-11 (encl. I-j) defines a frisk as "running of the hands over the clothing, feeling for a weapon." § 87(2)(g), § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation H: Abuse of Authority: PO Carl Bennett searched § 87(2)(b)**

Both officers stated that while they frisked § 87(2)(b) he was not searched. § 87(2)(b) stated that after he was pinned against the wall and frisked, PO Bennett obtained his identification card, by reaching into his pocket. § 87(2)(b) denied ever presenting his identification to any of the officers. PO Nunez and PO Bennett stated that § 87(2)(b) handed over his identification after he was frisked.

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation I: Offensive Language: PO Fabio Nunez made remarks about § 87(2)(b) and § 87(2)(b)'s sexual orientation.**

§ 87(2)(b) stated that PO Nunez called him and § 87(2)(b) "faggots" § 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED].  
§ 87(2)(g)  
[REDACTED]  
[REDACTED]



§ 87(2)(g), § 87(4-b)

[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: